



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Steven R. Ross
Akin Gump Strauss Hauer & Feld
1333 New Hampshire Avenue, N.W.
Washington, D.C. 20036-1564

FEB 27 2009

RE: MUR 6143
Galen Capital Group
William P. Danielczyk

Dear Mr. Ross:

On September 19, 2007 and December 31, 2007, you notified the Federal Election Commission ("the Commission") of the possibility of violations by your clients, Galen Capital Group and William P. Danielczyk, of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act").

On December 2, 2008, the Commission found that there is reason to believe Galen Capital Group and William P. Danielczyk knowingly and willfully violated 2 U.S.C. §§ 441b(a) and 441f, provisions of the Act. In addition, the Commission found reason to believe that Galen Capital Group and William P. Danielczyk violated 2 U.S.C. § 441b(a) and 11 C.F.R. § 114.2. The Factual and Legal Analysis, which more fully explains the Commission's findings, is attached for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office within 15 days of your receipt of this letter. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

Please note that you have a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. See 18 U.S.C. § 1519.

If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter.

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Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

For your information, we have enclosed a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Elena Paoli, the attorney assigned to this matter, at (202) 694-1548.

On behalf of the Commission,


Steven T. Walther
Chairman

Enclosures
Factual and Legal Analysis

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1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

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4 **RESPONDENTS:** Galen Capital Group
5 William P. Danielczyk
6

MUR: 6143

7 **I. INTRODUCTION**

8 This matter originated with a *sua sponte* submission filed by Galen Capital Group
9 ("Galen") and William P. Danielczyk. After conducting an internal investigation, Galen and
10 Danielczyk admit that Galen improperly reimbursed Galen employees and others for political
11 contributions totaling \$198,700 in 2006 and 2007.

12 **II. FACTUAL SUMMARY**

13 Galen, a privately held merchant banking firm in McLean, Virginia, and Danielczyk,
14 Galen's chairman and CEO, co-hosted a fundraiser for Hillary Clinton's Senate campaign in
15 September 2006 ("Senate Fundraiser") and another fundraiser for Clinton's Presidential
16 campaign in March 2007 ("Presidential Fundraiser"). Galen's internal investigation revealed that
17 the corporation through Danielczyk reimbursed employees, officers, and third parties including
18 family members of Galen employees for contributions they made in connection with these
19 fundraisers. See Attachment 1, Contributions and Reimbursement Chart.

20 **1. 2006 Senate Fundraising Event**

21 The Senate Fundraiser was held on September 12, 2006, at the Ritz-Carlton in Tyson's
22 Corner, Virginia. It was co-hosted by Zahir Ahmad, who is described by Galen as a business
23 associate of Danielczyk's and an investor in Galen. Galen reimbursed 11 people for
24 contributions to the 2006 Senate Fundraiser totaling \$42,400. The reimbursed individuals
25 included six Galen officers and employees. Because the reimbursement amounts did not exactly

1 match the contribution amounts, the corporation actually paid out \$44,129.52 in reimbursements
2 for these contributions. Galen made reimbursements for the Senate Fundraiser by corporate
3 checks coded as "expenses for the months of August and September." Several Galen employees
4 helped with the Senate Fundraiser. Two employees worked at the front desk at the event to
5 accept contributions and hand out name tags. Another employee took photographs, but this
6 employee explained that he volunteered for this task. One employee helped plan the events by
7 interfacing with the campaign, sending out invitations, and taking RSVPs. This employee
8 considered these activities to be "part of the job" and spent 10-15 hours per week leading up to
9 the event and 20 hours the week of the event working on coordinating the fundraiser.

10 The corporation paid for several out-of-town employees' travel expenses, but Galen's
11 submission maintains that this travel was related to business meetings that were scheduled
12 around the time of the Senate Fundraiser.

13 2. 2007 Presidential Fundraiser

14 As with the 2006 Senate Fundraising event, Zahir Ahmad co-hosted the 2007 Presidential
15 Fundraiser with Danielczyk. This fundraiser was held on March 27, 2007, at Senator Hillary
16 Clinton's house in Washington, D.C. Galen reimbursed 34 individuals for contributions to the
17 2007 Presidential Fundraiser totaling \$156,300. The reimbursed individuals included eight
18 Galen officers and employees and six of their family members. Again, because the
19 reimbursement amounts did not exactly match the contribution amounts, Galen actually paid out
20 \$154,551.19. Galen made the reimbursements for the Presidential Fundraiser by corporate
21 checks coded as "marketing expenses."

1 At the Presidential Fundraiser, campaign staff required contributors to sign an
2 authorization form, which included a paragraph confirming that the contribution was not being
3 reimbursed by another. According to Galen's *sua sponte* submission, contributors interviewed
4 by Galen's law firm indicated that they either did not read or understand the form, or that they
5 thought their contributions were nevertheless permissible. Galen said it assumes that
6 contributors signed similar forms for the Senate Fundraiser, but it could not locate copies of any.

7 For the 2007 Presidential Fundraiser, Galen provided a limousine service to transport
8 several employees to and from the event. While Galen initially paid for these limousine services,
9 Galen communications officer April Spittle reimbursed the company for these expenses from her
10 personal funds on September 19, 2007, after it came to her attention that the corporate
11 expenditure was illegal.

12 3. Danielczyk's Explanation of the Reimbursements

13 Danielczyk claims that while he was aware that corporations could not make direct
14 contributions to campaigns, he was unaware that federal law prohibited a corporation from
15 reimbursing individual contributions. According to Galen's *sua sponte* submission, Danielczyk
16 viewed the reimbursements not as reimbursements for contributions, but rather as a "general
17 benefit or perk related to employment or association with Galen." Specifically, he believed
18 that employees would enjoy the "special, unique, and exciting benefit" of attending a private
19 event with Hillary Clinton.

20 In the case of the Presidential Fundraiser, Danielczyk said he intended to reward officers
21 and employees with bonus payments relating to a March 22, 2007, transaction in which Galen
22 made a significant investment in International Jet Management ("IJM"). According to

1 Danielczyk, the checks provided around the time of the Presidential Fundraiser were intended to
2 be the first installment in a series of bonuses relating to the IJM deal, but were timed to allow
3 recipients to be able to attend the Presidential Fundraiser. According to its *sua sponte*
4 submission, Galen also gave several non-employees checks around the same time because
5 Danielczyk wanted these individuals to enjoy the same opportunity to attend the fundraiser.

6 The facts suggest, however, that Danielczyk only created this explanation of the 2007
7 checks after seeing news reports about Norman Hsu in early September 2007, and perhaps after
8 receiving phone calls from the Wall Street Journal. Sometime in September 2007, Danielczyk
9 "caused to be drafted" a letter explaining that the March 2007 reimbursement checks were
10 intended as "consulting fees" relating to the IJM transaction. The letter was backdated March 20,
11 2007, and distributed to "a number of people" who had received contribution reimbursements.
12 Later in September, Galen distributed \$1,500 checks to "several of the individuals" who had
13 received reimbursements in March 2007, along with a letter explaining that the check was the
14 second installment of the IJM consulting fee. These letters were backdated September 1, 2007.
15 According to Galen's *sua sponte* submission, a third payment relating to the IJM transaction was
16 scheduled for early 2008.

17 III. LEGAL ANALYSIS

18 Corporations are prohibited from using corporate resources to engage in campaign
19 fundraising activities. See 2 U.S.C. § 441b(a). A corporation can only act through its directors,
20 officers, and agents, and may be held liable for the acts of an employee within the scope of the
21 employment and that benefit the corporate employer. See *United States v. Wallach*, 935 F.2d
22 445, 462 (2d Cir. 1991); 1 William Meade Fletcher et al., *Fletcher Cyclopedia of the Law of*

1 *Private Corporations* § 30 (Supp. 2004). *See, e.g., Liquid Air Corp. v. Rogers*, 834 F.2d 1297,
2 1306 (7th Cir. 1987). In addition, section 441b(a) prohibits any officer or director of any
3 corporation from consenting to any expenditure or contribution by the corporation. This
4 prohibition extends to the facilitation of contributions to candidates or political committees by a
5 corporation and its officers, directors or agents. *See* 11 C.F.R. § 114.2(f)(1). Facilitation
6 includes situations when officials of a corporation direct subordinates "to plan, organize or carry
7 out the fundraising project as part of their work responsibilities using corporate ... resources."
8 11 C.F.R. § 114.2(f)(2)(i)(A). The Federal Election Campaign Act, as amended, also provides
9 that no person shall make a contribution in the name of another person or knowingly permit their
10 name to be used to effect such a contribution. 2 U.S.C. § 441f.

11 As set forth below, Galen and Danielczyk's actions fall squarely within the prohibitions
12 against making contributions in the name of another and making corporate contributions to
13 federal political committees. They also used corporate resources to facilitate the making of
14 contributions.

15 1. Galen and Danielczyk Reimbursed Contributors with
16 Corporate Funds
17

18 In their *sua sponte* submission, Galen and Danielczyk admit that they reimbursed
19 contributors by corporate check. They also "accept full responsibility for these actions."

20 Although Danielczyk claims that he did not know it was illegal to reimburse contributions, the
21 submission acknowledges that the donor cards signed by him and other contributors contained
22 this warning, and he fails to explain his efforts to conceal the payments.

23 Galen and its CEO, William Danielczyk, knowingly and willfully violated 2 U.S.C.
24 §§ 441b(a) and 441f by reimbursing campaign contributions with corporate funds. To establish a

1 knowing and willful violation, there must be knowledge that one is violating the law. *See FEC v.*
2 *John A. Dramesi for Congress Comm.*, 640 F. Supp. 985, 987 (D.N.J. 1986). A knowing and
3 willful violation may be established "by proof that the defendant acted deliberately and with
4 knowledge that the representation was false." *U.S. v. Hopkins*, 916 F.2d 207, 214 (5th Cir. 1990).
5 An inference of a knowing and willful act may be drawn "from the defendant's elaborate scheme
6 for disguising" his or her actions. *Id.* at 214-15.

7 Accordingly, the fact that Galen coded the reimbursements as "expenses for the months
8 of August and September" and "marketing expenses," combined with the fact that the
9 reimbursement amounts do not exactly match the contribution amounts, evidences knowledge of
10 the impermissibility of the reimbursements and an attempt to conceal their purpose. In addition,
11 Danielczyk signed a donor authorization card stating that his own 2007 contribution was not
12 being reimbursed, and he backdated two letters to "cover up" the 2007 reimbursements, actions
13 which demonstrate knowing and willful conduct.¹ Finally, it simply strains credulity that
14 Danielczyk would know that corporations could not make campaign contributions while
15 believing that a corporation could reimburse employees and others for such contributions.

16 Therefore, there is reason to believe that Galen Capital Group and William P. Danielczyk
17 knowingly and willfully violated 2 U.S.C. §§ 441b(a) and 441f.

¹ Such information has supported a "knowing and willful" finding in the past. *See* MUR 5871 (Noe) (criminal intent inferred from reimbursements that were slightly higher or lower than contribution amounts); *cf* MUR 5357 (Centex) and MUR 4931 (Audiovox) (reimbursements from corporation were "grossed-up" to offset any tax liability).

2. Corporate Resources Were Used to Facilitate the Contributions

Several of Galen's actions constitute corporate facilitation in violation of 2 U.S.C. § 441b(a) and 11 C.F.R. § 114.2. Specifically, Galen facilitated contributions when it provided a limousine service to the 2007 Presidential Fundraiser. Further, Galen impermissibly facilitated contributions by requiring employees to plan and work at the 2006 Fundraiser and by paying for travel of out-of-town guests.

Therefore, there is reason to believe that Galen Capital Group and William P. Danielczyk violated 2 U.S.C. § 441b(a) and 11 C.F.R. § 114.2.

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